United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

74-2041

B P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 74-2041

UNITED STATES OF AMERICA,

Respondent,

-v.-

BEN J. SLUTSKY and JULIUS SLUTSKY,
d/b/a "THE NEVELE,"

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF THE JEROME FRANK
LEGAL SERVICES ORGANIZATION
AMICUS CURIAE

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BRIEF OF THE JEROME FRANK
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Statement of Facts

On January 9, 1973, after a jury trial, Ben and Julius Slutsky were found guilty of attempted income tax evasion and the filing of false tax returns in violation of Sections 7201 and 7206 of Title 26 of the United States Code. On March 19, 1973, the Hon. Lloyd F. MacMahon, Southern District of New York, sentenced each of the appellants to five years under 18 U.S.C. §4208(a)(2). Judge MacMahon also imposed a $40,000 fine on Ben Slutsky and a $35,000 fine on Julius Slutsky.

In addition, he taxed the costs of the prosecution against each defendant.

On July 22, 1974, Julius and Ben Slutsky filed a motion to reduce or modify their sentences under Rule 35 of the Federal Rules of Criminal Procedure. Judge MacMahon denied this motion on July 24, 1974 without hearing or opinion.

Interest of Amicus

The Jerome N. Frank Legal Services Organization (L.S.O.) coordinates the clinical work of students at Yale Law School. Under the supervision of practicing attorneys, law students provide assistance to low-income residents of the New Haven area, mental patients, and prisoners. Other law students work with prosecutors and public defenders or engage in a wide variety of client-service legal work. One of LSO's ongoing concerns has been with inmates at the Federal Correctional Institution, Danbury, Connecticut, where the Organization has become the major source of non-appellate legal assistance.[1/] Through this work at Danbury, LSO's student and faculty participants have developed a special interest in the area of parole and its impact on the federal criminal justice system.

Out of LSO's concern with the parole problems of individual prisoners has come a larger program of study, consulting and litigation. Faculty

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1/ Areas of work include motions under Rule 35, F.R.Cr.P.; motions under 28 U.S.C. § 2255; habeas corpus actions related to conditions of confinement; assisting in the disposition of detainers; internal prison administrative complaints; immigration and deportation problems; disciplinary proceedings; and, of course, parole advice, representation, and litigation. LSO does not handle criminal appeals.

supervisors are in frequent contact with staff members of the United States Board of Parole and have hosted speaking engagements for them at Yale Law School. Students in LSO have handled several parole-guideline-related cases, including Battle v. Norton, 365 F. Supp. 925 (D. Conn. 1973), and Grasso v. Norton, 371 F. Supp. 171, 376 F. Supp. 116 (D. Conn. 1974). In addition to casework, LSO participates in and co-sponsors two major academic projects, supported in part by the Guggenheim Foundation. The first is a note in progress for the Yale Law Journal, studying the impact upon the sentencing system as a whole of changes in federal parole board policies. The other is a year-long Sentencing and Parole Workshop, in which students, teachers, lawyers and judges will discuss and study these problems with parole, probation and prison officials.

Because this case presents issues of importance in the ongoing work of LSO, and because the organization believes it has special knowledge and expertise to contribute to the Court on these issues, LSO has moved for leave to file this brief amicus curiae in connection with Question 1 of Appellant's Brief; Point I of the Appellee's Brief. Because of the complex and technical nature of the Parole Board's new policies, and LSO's practical experience in studying and working with them, LSO believes the Court's understanding of the case will be enhanced by its acceptance of this brief.

ARGUMENT

THE PUBLIC REVELATION OF NEW PAROLE BOARD PROCEDURES CONSTITUTES NEW INFORMATION OF SUBSTANTIAL IMPORTANCE, REQUIRING RECONSIDERATION OF A SENTENCE.

When Judge MacMahon sentenced Julius and Ben Slutsky on March 19, 1973, the Parole Board used different procedures for making release decisions than it does now. Under the Parole Board procedures then in effect for 4208(a)(2) Sentences, the Parole Board would have regarded the Slutskys as eligible for release immediately. 28 C.F.R. §2.4 (1973). The Board would have given the Slutskys a hearing shortly after their arrival at an institution. At this hearing, the Board could have given the Slutskys a parole date within a few months, or given them a "set off" -- i.e., continued their cases for further parole hearings at a future date. In the latter case, the Board representative would have used the initial hearing:

> to interpret to the prisoner the meaning of the indeterminate nature of his [§4208(a)(2)] sentence, to counsel with him concerning any treatment goals which the Board feels he may strive to attain and to answer his questions about the Board's criteria for selection of certain inmates for parole.

G. Reed [then Chairman, United States Board of Parole,] Federal Parole and the Indeterminate Sentence, 23 FED. PROBATION (Dec. 1959) at 12. In other words, the parole system was based upon behavior, response to "treatment" and achievement of program goals.

After Judge MacMahon had sentenced the Slutskys, but before they had begun service of their sentences, the Parole Board changed its rules and

procedures. On November 19, 1973, in its first substantial reform since 1958, the Board adopted officially a new and mechanical system[2/] which employs factors based entirely upon past history and type of crime. On June 5, 1974, the Parole Board published a codification of the new rules and regulations, which left the guidelines adopted in November essentially unchanged.[3/]

Under the new system, the Parole Board's procedure is much simpler than before. The Board examiners look at an inmate's record to find the answers to nine questions.

The answers to these nine questions, when tabulated, furnish the Board with a "salient factor score (parole prognosis)." This score is supposed to predict risk -- i.e., how likely an inmate is to commit a crime within two years of release. P. Hoffman & J. Beck, Parole Decision-Making: A Salient Factor Score (U.S. Board of Parole Research Report, April, 1974).

The examiners then turn to the pre-sentence report, which describes the offense committed. The examiners classify the inmate's crime[4/]

2/ 38 Fed. Reg. 31912 (1973).
3/ 39 Fed. Reg. 20028 (1974)(Attached to this Brief as Exhibit "A").
4/ In fact, the Board does not rank federal statutory crimes on this scale, but "offense severity." The "offense" ranked is chosen from a list made up by the Board's staff from descriptions of deviant behavior not necessarily related to federal statutory crimes. The Board's published severity groupings are determined by the consensus of subjective judgments of Parole Board members. See 28 C.F.R. §2.20(f)(1974) at 39 Fed. Reg. 20030. When an inmate's commitment offense is not listed, the examiners use their own subjective judgment in ranking offense severity. More important however, the examiners may also use their judgment to redefine the "severity level" of any offense, based on pending or dismissed charges, hearsay allegations, or other "mitigating or aggravating circumstances." See 28 C.F.R. §2.20(d)(1974)published at 39 Fed. Reg. 20030. See also, Lupo v. Norton, 371 F. Supp. 156 (D.Conn. 1974); Kohlman v. Norton, Civ. No. B-74-258 (D.Conn., July 31, 1974).

in accordance with the severity scale found in the Board's guidelines. The severity classification, along with the salient factor score, intersect on a matrix-type chart to show a predicted length of time to be served. This predicted period is equal to (and determined by) the median term of actual incarceration served by a sample of recent pre-guideline federal inmates with the same "offense severity" and "salient factor score."

For example, in the cases of Ben and Julius Slutsky, each has a salient factor score of 11, the highest possible. On information and belief,[5/] the Parole Board will classify their crime as one of "very high" severity. Using these data, the guidelines indicate a term of from 26 to 36 months confinement. The Parole Board is thus nearly certain to afford the Slutskys their first serious parole consideration at a hearing held after 26 months of incarceration. Under a regular adult sentence, 18 U.S.C. §4202, they would be statutorily entitled to reconsideration before 20 months had expired (one-third of five years). Cf. Grasso v. Norton, 371 F. Supp. 171 (D.Conn. 1974).

It is important to note that the guidelines make no provision for the 4208(a)(2) sentence. This point was well developed by Judge Newman in Grasso v. Norton, 376 F. Supp. 116 (D. Conn.), appeal docketed, 74-1222 (2d Cir. 1974). Nor does institu-

5/ Evasion of more than $50,000 in taxes is not listed on the guidelines. See 39 Fed. Reg. 20031 (1974). By the analogy system of ranking unlisted offenses that has been used, however, the crime would be ranked as follows: No non-violent offense involving more than $100,000 is ranked "high severity"; thus, this offense is more severe than "high". But tax evasion cannot be compared with the "greatest severity" offenses (murder, kidnapping, espionage). Hence, evasion of more than $100,000 in taxes will be ranked as "very high" severity.

tional performance have a significant effect upon parole under the guidelines. Though the Board specifies that the guidelines are based upon good institutional performance, in fact such demonstration of rehabilitation have almost no effect on parole. This is evidenced by the fact that the Board, at latest count, was following its guidelines in over 92% of the cases, Grasso v. Norton, 376 F. Supp. 116, 119 (D. Conn. 1974). Considering that only of the other 8% were under the guidelines rather than over, it is clear that excellent institutional performance has not been used very often to justify decisions for early parole.

Judge MacMahon could not have known how the Parole Board would treat the Slutskys when he sentenced them to five year sentences under §4208(a)(2), because the Parole Board had not yet instituted its guidelines.

Whatever Judge MacMahon thought about the §4208(a)(2) sentence, he could not have known that it would make no difference to the Parole Board in deciding whether or not to grant parole.

Whatever the Judge thought about the Parole Board process, he could not have known at the time of sentencing that he was in fact giving the Slutskys better than a 92% chance of spending more than 26 months in prison, whatever their institutional performance or likelihood of success on parole. Finally, the Judge could not have known that by virtue of the way the Parole Board handles (a)(2) cases, the Slutskys would stand a 90% chance of spending six extra months in prison before receiving a meaningful parole hearing, compared with a "regular adult" prisoner.

The Parole Board's new guidelines have, in effect, created a system of administratively-imposed minimum sentences. The Parole Board's argument that its new procedures are merely "guidelines" is belied by the statistics showing that they adhere to their guidelines in 92% or more of their cases.

The effect of the Parole Board's adoption of the new guidelines upon the Slutskys is the same as it would have been had the sentencing judge relief upon erroneous information in the presentence report; cf. Townsend v. Burke, 334 U.S. 736 (1948). For example, it is clear that if the sentencing judge had thought that the Slutskys had prior convictions, when in fact they had no prior convictions, the sentences would have to be vacated. Id.; see also United States v. Malcolm, 432 F.2d 809 (2d Cir. 1970). The error here is of the same magnitude. The sentencing judge specified that the Slutskys would receive the benefits of the 4208(a)(2) sentence, not knowing that at the time the sentences would in fact begin the 4208(a)(2) sentence would not be a benefit -- indeed, might even be a burden. See Grasso v. Norton, 371 F. Supp. 171, 174 (D. Conn. 1974).

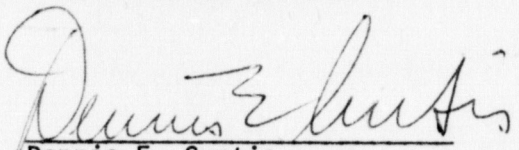
The Government suggests (G. Br. 11-12) that the Slutsky's argument is with the Parole Board rather than with the sentencing judge.

This contention fails to recognize that the sentencing judge must necessarily consider the parole implications of the sentence imposed. 18 U.S.C. §§4202 et seq.

Since the judge could not have known the parole implications of his sentence, he has the duty to reconsider in light of the new and pertinent information.

Since the mistake was substantial, and has harmed petitioners, they should be sentenced again taking into account the true nature of the 4208(a)(2) sentence in light of the Parole Board's new guidelines.

Respectfully submitted,



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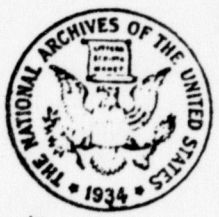


DEPARTMENT OF JUSTICE

U.S. Board of Parole

■

PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE, U.S. BOARD OF PAROLE

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

The following rules reflect the revised organization, operation, procedures, and policies of the United States Board of Parole and are published under the authority of 28 CFR, Part O, Subpart V, and 18 U.S.C. 4201–4210, 5001–5037.

The Board of Parole expressly disclaims that its rules are subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).

With the exception of § 2.20, these rules will become effective in the Board's Northeast Region (Region I) on June 5, 1974, and will apply to all subsequent parole and parole revocation hearings conducted in that region. Region I is comprised of the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. Federal prisoners outside the Northeast Region will be considered for parole and parole revocation under the Board's present rules until such time as the revised procedures are made applicable to other regions as these regions become operational.

Section 2.20, the Board's paroling policy guidelines will become effective nationwide on June 5, 1974. This statement of policy is published in order to inform the public of the Board's customary paroling policy. The guidelines incorporated in the policy statement are merely indications of how the Board generally intends to exercise its discretion in making future parole release decisions.

Part 2 of 28 CFR is revised to read as follows:

Sec.
2.1 Definitions.
2.2 Eligibility for parole, regular adult sentences.
2.3 Same; adult indeterminate sentences.
2.4 Same; juvenile delinquents.
2.5 Same; committed youth offenders.
2.6 Same; sentences under the Narcotic Addict Rehabilitation Act.
2.7 Same; sentences under the gun control statute.
2.8 Same; sentences of six months or less followed by probation.
2.9 Study prior to sentencing.
2.10 Date service of sentence commences.
2.11 Application for parole.
2.12 Hearing procedure.
2.13 Initial hearing.
2.14 Review hearings.
2.15 Petition for consideration of parole prior to date set at hearing.
2.16 Parole of prisoner in state or territorial institution.
2.17 Original jurisdiction cases.
2.18 Granting of parole.
2.19 Consideration by the Board.
2.20 Paroling policy guidelines; statement of general policy.
2.21 Reports considered.
2.22 Communication with the Board.
2.23 Delegation to hearing examiners.
2.24 Review of panel decision by the Regional Director and the National Appellate Board.
2.25 Appeal of hearing panel decision.
2.26 Appeal to National Appellate Board.
2.27 Appeal of original jurisdiction cases.
2.28 Reopening of cases.
2.29 Withheld and forfeited good time.
2.30 Release; modification of release date.
2.31 False or withheld information.
2.32 Committed fines.
2.33 Parole to detainers; statement of policy.
2.34 Parole to local or immigration detainers.
2.35 Mental competency proceedings.
2.36 Release plans.
2.37 Release on parole; statement of policy.
2.38 Sponsorship of parolees; statement of policy.
2.39 Mandatory release in the absence of parole.
2.40 Same; youth offenders.
2.41 Reports to police departments of names or parolees; statement of policy.
2.42 Community supervision by United States Probation Officers.
2.43 Duration of period of community supervision.
2.44 Conditions of release.
2.45 Travel by parolees and mandatory releasees.
2.46 Supervision reports, modification and discharge from supervision.
2.47 Modification and discharge from supervision; youth offenders.
2.48 Setting aside conviction.
2.49 Revocation of parole or mandatory release.
2.50 Same; youth offenders.
2.51 Unexpired term of imprisonment.
2.52 Execution of warrant; notice of alleged violations.
2.53 Warrant placed as a detainer and dispositional interview.
2.54 Revocation by the Board, preliminary interview.
2.55 Local revocation hearing.
2.56 Revocation hearing procedure.
2.57 Confidentiality of parole records.

AUTHORITY: 18 U.S.C. 42101–4210, 5001–5037; 28 CFR Part O, Subpart v.

§ 2.1 Definitions.

(a) For the purpose of this part, the term "Board" means the United States Board of Parole; and the terms "Youth Correction Division" and "Division" each mean the Youth Correction Division of the Board.

(b) As used in this part, the term "National Appellate Board" means the Chairman, Vice Chairman, and at least one member of the Board, all of whom also serve as National Appellate Board members in the headquarters office, i.e., Washington, D.C.

(c) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms have when those terms are used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

§ 2.2 Eligibility for parole, regular adult sentences.

Except as set out in the following sections, a federal prisoner wherever confined and serving a definite term or terms of over one hundred and eighty days may, in accordance with the regulations prescribed in this part, be released on parole after serving one-third of such term or terms or after fifteen years of a life sentence or a sentence of over forty-five years (18 U.S.C. 4202).

§ 2.3 Same: adult, indeterminate sentences

A Federal prisoner, other than a juvenile delinquent or a committed youth offender, who has been sentenced to a maximum term of imprisonment in excess of one year may, if the court has designated a minimum term to be served, which term may be less than, but not more than, one-third of the maximum sentence imposed, be released on parole after serving the minimum term. In cases in which a court imposes a maximum sentence of imprisonment upon a prisoner and specifies that the prisoner may become eligible for parole at such times as the Board may determine, the prisoner may be released on parole at any time in the discretion of the Board (18 U.S.C. 4208(a)).

§ 2.4 Same; juvenile delinquents.

A juvenile delinquent who has been committed and who, by his conduct, has given satisfactory evidence that he has reformed, may be released on parole at any time under such terms and conditions as the Board deems proper if it shall appear to the satisfaction of the Board that there is a reasonable probability that the juvenile will remain at liberty without violating the law (18 U.S.C. 5037).

§ 2.5 Same: committed youth offenders.

The Youth Correction Division may at any time, after reasonable notice to the Director of the Bureau of Prisons, release conditionally under supervision a committed youth offender. A youth offender committed under section 5010(b) of title 18 of the United States Code to a maximum six year term shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction. A youth offender committed under section 5010 (c) of title 18 of the United States Code to a maximum term which is more than six years shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court (18 U.S.C. 5017).

§ 2.6 Same: sentences under the Narcotic Addict Rehabilitation Act.

The Narcotic Addict Rehabilitation Act provides for sentence to a maximum term for treatment as a narcotic addict. Parole may be ordered by the Board after at least six months in treatment, not including any period of time for "study" prior to final judgment of the Court. Before parole is ordered by the Board, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative may also report to the Board whether the prisoner should be released. Recer-

tification by the Surgeon General prior to reparole consideration is not required (18 U.S.C. 4254).

§ 2.7 Same; sentences under the gun control statute.

A Federal prisoner sentenced under 18 U.S.C. 924 for violation of Federal gun control laws is considered eligible for parole at such time as the Board may determine. Prisoners sentenced under this provision are considered for parole in the same manner as if they had been sentenced under 18 U.S.C. 4208(a)(2).

§ 2.8 Same; sentences of six months or less followed by probation.

A Federal prisoner sentenced under 18 U.S.C. 3651 to serve a period of six months or less in a jail type or treatment institution, with a period of probation to follow, is not eligible for parole.

§ 2.9 Study prior to sentencing.

(a) When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing under the provisions of 18 U.S.C. 4208(b), the report to the sentencing court is prepared and submitted directly by the United States Bureau of Prisons.

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Youth Correction Division shall report its findings to the court (18 U.S.C. 5010(e)).

§ 2.10 Date service of sentence commences.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however,* That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) Service of the sentence of any person who is committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served shall commence to run from the date on which he is received at such jail or other place of detention.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run and continues to run uninterruptedly from the date of conviction, except when such offender is on bail pending appeal or is in escape status.

§ 2.11 Application for parole.

(a) A prisoner, other than a juvenile delinquent, a committed youth offender, or an offender committed under the Narcotic Addict Rehabilitation Act, desiring to apply for parole shall execute such application forms as may be prescribed by the Board. Such forms shall be available at each Federal institution and shall be provided to prisoners eligible for parole. Such prisoners may waive parole consideration on a form provided for that purpose. If such a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Board to the institution where he is confined, provided he has applied prior to 45 days from the first scheduled date of this visit. A prisoner who receives an initial hearing may not waive any subsequent review hearing scheduled by the Board except as provided in § 2.16 (c). New parole applications are not necessary for such review hearings.

(b) A prisoner who is required to apply before receiving a parole hearing but who fails to submit either an application or a waiver form shall be referred to the Board's representatives by the chief executive officer of the institution. The prisoner shall then receive an explanation of his right to apply for parole at a later date.

(c) Juvenile delinquents, youthful offenders, and those committed under the Narcotic Addict Rehabilitation Act shall not apply for parole. Instead, such prisoners shall be scheduled for initial hearings at the first visit to the institution by representatives of the Board after they have been classified by the institution. The Board may order parole as a result of any such hearing or may order review of such prisoner's case at a later date.

§ 2.12 Hearing procedure.

(a) Prisoners shall be given written notice of the time and place of the hearing described in §§ 2.13 and 2.14. Prisoners may be represented at hearings by a person of their choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(b) No interviews with the Board, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Board procedures. Hearings shall not be open to the public, and the records of all such hearings shall be treated as confidential and shall not be open to inspection by the prisoner concerned, his representative or any other unauthorized person.

§ 2.13 Initial hearing.

(a) An initial hearing shall be conducted by a panel of two hearing examiners designated by the Board. The examiner panel shall inform the prisoner of the decision and, if parole is denied, of the reasons therefor. The decision of the examiner panel, subject to provisions of § 2.23 (b) and (c) shall be final unless action is initiated by the Regional Director pursuant to § 2.24.

(b) In accordance with § 2.18 the reasons for parole denial may include, but are not limited to, the following reasons, with further specification where appropriate:

(1) Release at this time would depreciate the seriousness of the offense committed and would thus be incompatible with the welfare of society.

(2) There does not appear to be a reasonable probability at this time that the prisoner would live and remain at liberty without violating the law.

(3) The prisoner has (a serious) (repeated) disciplinary infraction(s) in the institution.

(4) Additional institutional treatment is required to enhance the prisoner's capacity to lead a law-abiding life.

(c) In lieu of or in combination with the reasons in paragraph (b) (1) and (2) of this section the prisoner after initial hearings shall be furnished a guideline evaluation statement which includes the prisoner's salient factor score and offense severity rating as described in § 2.20, as well as the reasons for a decision to continue the prisoner for a period outside the range indicated by the guidelines.

(d) Written notification of the decision or referral under § 2.17 or § 2.24 shall be mailed or transmitted to the prisoner within fifteen working days of the date of the hearing. If parole is denied, the prisoner shall also receive in writing as a part of the decision, the reasons therefor.

§ 2.14 Review hearings.

All hearings subsequent to the initial hearing shall be considered as review hearings. Review hearings by examiners designated by the Board shall be scheduled for each Federal institution, and prisoners shall appear for such hearings in person, except for the following cases:

(a) A case receiving a continuance of six months or less shall be considered by an examiner panel on the record (including a current institutional progress report).

(b) A prisoner with a sentence under 18 U.S.C. 4208(a)(2) or 924 who receives a continuance to a date past one-third of his maximum sentence at an initial hearing shall upon completion of one-third of his sentence receive a review by an examiner panel on the record (including a current institutional progress report).

(c) A prisoner sentenced under the Youth Corrections Act or Federal Juvenile Delinquency Act who receives a continuance of two years or more shall receive a review by an examiner panel on the record (including a current institutional progress report) upon completion of eighteen months of such continuance.

(d) Notification of review decisions shall be given as set forth in § 2.13(c). No prisoner shall be continued for more than three years from the time of the last hearing without further review.

§ 2.15 Petition for consideration of parole prior to date set at hearing.

When a prisoner has met the minimum time of imprisonment required by law,

the Bureau of Prisons may petition the responsible Regional Director for reopening the case under § 2.28 and consideration of parole prior to the date set by the Board at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§ 2.16 Parole of prisoner in state or territorial institution.

(a) Any person who has been convicted of any offense against the United States which is punishable by imprisonment but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Board on the same terms and conditions by the same authority, and subject to recommital for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, the parole decision shall be made by an examiner panel of the appropriate region on the record only.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local, or territorial institutions may be considered for parole on the record only, provided they sign a waiver of their right to a personal hearing. If such a prisoner does not waive a personal hearing, he shall be transferred by the Bureau of Prisons to a Federal institution where he will be considered for parole at the next visit by an examiner panel of the Board.

§ 2.17 Original jurisdiction cases.

(a) A Regional Director may designate certain cases to be within the original jurisdiction of the Regional Directors. All original jurisdiction cases shall be heard by a panel of hearing examiners who shall follow the procedures provided in § 2.12. A summary of this hearing and any additional comments that the hearing examiners may deem germane shall be submitted to the five Regional Directors. The Regional Directors shall make the original decision by a majority vote.

(b) The following criteria will be used in designating cases for the original jurisdiction of the Regional Directors:

(1) *National security.* Prisoners who have committed serious crimes against the security of the nation, e.g., espionage or aggravated subversive activity.

(2) *Organized crime.* Persons who the Regional Director has reason to believe may have been professional criminals or may have played a significant role in an organized criminal activity.

(3) *National or unusual interest.* Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

§ 2.18 Granting of parole.

The granting of parole rests in the discretion of the Board of Parole. The Board may parole a prisoner who is otherwise eligible if (a) in the opinion of the Board such release is not incompatible with the welfare of society; (b) he has observed substantially the rules of the institution in which he is confined; and (c) there is a reasonable probability that he will live and remain at liberty without violating the laws (18 U.S.C. 4203(a)).

§ 2.19 Consideration by the Board.

In the exercise of its discretion, the Board generally considers some or all of the following factors and such others as it may deem appropriate:

(a) Sentence data:

(1) Type of sentence;

(2) Length of sentence;

(3) Recommendations of judge, U.S. Attorney, and other responsible officials.

(b) Present offense:

(1) Facts and circumstances of the offense;

(2) Mitigating and aggravating factors;

(3) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any.

(c) Prior criminal record:

(1) Nature and pattern of offenses;

(2) Adjustment to previous probation, parole, and confinement;

(3) Detainers.

(d) Changes in motivation and behavior:

(1) Changes in attitude toward self and others;

(2) Reasons underlying changes;

(3) Personal goals and description of personal strength or resources available to maintain motivation for law abiding behavior.

(e) Personal and social history:

(1) Family and marital history;

(2) Intelligence and education;

(3) Employment and military experience;

(4) Physical and emotional health.

(f) Institutional experience:

(1) Program goals and accomplishments;

(i) Academic;

(ii) Vocational education, training or work assignments;

(iii) Therapy.

(2) General adjustment:

(i) Inter-personal relationships with staff and inmates;

(ii) Behavior, including misconduct.

(g) Community resources, including release plans:

(1) Residence; live alone, with family or others;

(2) Employment, training, or academic education;

(3) Special needs and resources to meet them.

(h) Results of scientific data and tools:

(1) Psychological tests and evaluations;

(2) Statistical parole experience tables (salient factor score).

(i) Paroling policy guidelines as set forth in § 2.20;

(j) Comments by hearing examiners; evaluative comments supporting a decision, including impressions gained from the hearing.

§ 2.20 Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Board of Parole has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for the cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered. For example, cases with exceptionally good institutional program achievement may be considered for earlier release.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) These guidelines do not apply to parole revocation or reparole considerations. The Board shall review the guidelines periodically and may revise or modify them at any time as deemed appropriate.

Adult guidelines for decisionmaking, average total time (in months) served before release (including jail time)

(Revised April 1974)

Offense characteristics—Severity of offense behavior (examples)	Offender characteristics—Parole prognosis (salient factor score)			
	Very good (11–9)	Good (8–6)	Fair (5–4)	Poor (3–0)
Low	6–10	8–12	10–14	12–16
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than $1,000)				
Walkaway				
Low moderate	8–12	12–16	16–20	20–26
Alcohol law violations				
Counterfeit currency (passing/possession less than $1,000)				
Drugs: Marijuana, possession (less than $500)				
Firearms Act, possession/purchase/sale single weapon—not altered or machinegun				
Forgery/fraud (less than $1,000)				
Income tax evasion (less than $3,000)				
Selective Service Act violations				
Theft from mail (less than $1,000)				
Moderate	12–16	16–20	20–24	24–30
Bribery of public officials				
Counterfeit currency (passing/possession $1,000–$19,999)				
Drugs:				
"Hard drugs," possession by drug user (less than $500)				
Marijuana, possession ($500 or more)				
Marijuana, sale (less than $5,000)				
"Soft drugs," possession (less than $5,000)				
"Soft drugs," sale (less than $500)				
Embezzlement (less than $20,000)				
Explosives, possession/transportation				
Firearms Act, possession/purchase/sale altered weapon(s), machinegun(s), or multiple weapons				
Income tax evasion ($3,000–$50,000)				
Interstate transportation of stolen/forged securities (less than $20,000)				
Mailing threatening communications				
Misprison of felony				
Receiving stolen property with intent to resell (less than $20,000)				
Smuggler of aliens				
Theft, forgery/fraud ($1,000–$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High	16–20	20–26	26–32	32–38
Burglary or larceny (other than embezzlement) from bank or post office				
Counterfeit currency (passing possession $20,000 or more)				
Counterfeiting (manufacturing)				
Drugs:				
"Hard drugs," possession by drug-dependent user ($500 or more)				
"Hard drugs," sale to support own habit				
Marijuana, sale ($5,000 or more)				
"Soft drugs," possession ($5,000 or more)				
"Soft drugs," sale ($500–$5,000)				
Embezzlement ($20,000–$100,000)				
Interstate transportation of stolen/forged securities ($20,000–$100,000)				
Mann Act (no force—commercial purposes)				
Organized vehicle theft				
Receiving stolen property ($20,000–$100,000)				
Robbery (no weapon or injury)				
Theft, forgery/fraud ($20,000–$100,000)				
Very high	26–36	36–45	45–55	55–65
Robbery (weapon)				
Drugs:				
"Hard drugs," possession by nondrug-dependent user ($500 or more) or by nonuser (any quantity)				
"Hard drugs," sale for profit (no prior conviction for sale of "hard drugs")				
"Soft drugs," sale (more than $5,000)				
Extortion				
Mann Act (force)				
Sexual act (force)				
Greatest	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			
Aggravated felony (e.g. robbery, sexual act, assault)—weapon fired or serious injury				
Aircraft hijacking				
Drugs: "Hard drugs," sale for profit (prior conviction(s) for sale of "hard drugs")				
Espionage				
Explosives (detonation)				
Kidnapping				
Willful homicide				

NOTES

1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
4. If a continuance is to be given, allow 30 days (1 month) for release program provision.
5. These guidelines are predicted upon good institutional conduct and program performance.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

Youth guidelines for decisionmaking, average total time (in months) served before release (including jail time)

(Revised April 1974)

Offense characteristics—Severity of offense behavior (examples)	Offender characteristics—Parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Low	8-10	8-12	10-14	13-18
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than $1,000)				
Walkaway				
Low moderate	8-12	12-16	16-20	20-25
Alcohol law violations				
Counterfeit currency (passing/possession less than $1,000)				
Drugs: Marijuana, possession (less than $500)				
Firearms Act, possession/purchase/sale single weapon—not altered or machinegun				
Forgery/fraud (less than $1,000)				
Income tax evasion (less than $3,000)				
Selective Service Act violations				
Theft from mail (less than $1,000)				
Moderate	9-13	13-17	17-21	21-26
Bribery of public officials				
Counterfeit currency (passing/possession $1,000-$19,999)				
Drugs:				
"Hard drugs," possession by drug user (less than $500)				
Marijuana, possession ($500 or more)				
Marijuana, sale (less than $5,000)				
"Soft drugs," possession (less than $5,000)				
"Soft drugs," sale (less than $500)				
Embezzlement (less than $20,000)				
Explosives, possession/transportation				
Firearms act, possession/purchase/sale altered/weapon(s), machine-gun(s), or multiple weapons				
Income tax evasion ($3,000-$50,000)				
Interstate transportation of stolen/forged securities (less than $20,000)				
Mailing threatening communications				
Misprision of felony				
Receiving stolen property with intent to resell (less than $20,000)				
Smuggler of aliens				
Theft, forgery/fraud ($1,000-$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High	12-16	16-20	20-24	24-30
Burglary or larceny (other than embezzlement) from bank or post office				
Counterfeit currency (passing/possession $20,000 or more)				
Counterfeiting (manufacturing)				
Drugs:				
"Hard drugs," possession by drug dependent user ($500 or more)				
"Hard drugs," sale to support own habit				
Marijuana, sale ($5,000 or more)				
"Soft drugs," possession ($5,000 or more)				
"Soft drugs," sale ($500-$5,000)				
Embezzlement ($20,000-$100,000)				
Interstate transportation of stolen/forged securities ($20,000-$100,000)				
Mann Act (no force—commercial purposes)				
Organized vehicle theft				
Receiving stolen property ($20,000-$100,000)				
Robbery (no weapon or injury)				
Theft, forgery/fraud ($20,000-$100,000)				
Very high	20-27	27-32	33-36	36-42
Robbery (weapon)				
Drugs:				
"Hard drugs," possession by non-drug-dependent user ($500 or more) or by nonuser (any quantity)				
"Hard drugs," sale for profit [no prior conviction for sale of "hard drugs"]				
"Soft drugs," sale (more than $5,000)				
Extortion				
Mann Act (force)				
Sexual act (force)				
Greatest	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			
Aggravated felony (e.g. robbery, sexual act, assault)—weapon fired or serious injury				
Aircraft hijacking				
Drugs: "Hard drugs," sale for profit [prior conviction(s) for sale of "hard drugs"]				
Espionage				
Explosives (detonation)				
Kidnapping				
Willful homicide				

NOTES

1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
4. If a continuance is to be given, allow 30 days (1 month) for release program provision.
5. These guidelines are predicated upon good institutional conduct and program performance.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

NARA guidelines for decisionmaking, average total time (in months) served before release (including jail time)

(Revised April 1974)

Offense characteristics—Severity offense behavior (examples)	Offender characteristics—Parole prognosis (salient factor score)			
	Very good (11–9)	Good (8–6)	Fair (5–4)	Poor (3–0)
Low	6–12	6–12	12–18	12–18
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than $1,000)				
Walkaway				
Low moderate	6–12	6–12	12–18	12–18
Alcohol law violations				
Counterfeit currency (passing/possession less than $1,000)				
Drugs: Marijuana, possession (less than $500)				
Firearms Act, possession/purchase/sale single weapon—not altered or machinegun				
Forgery/fraud (less than $1,000)				
Income tax evasion (less than $3,000)				
Selective Service Act violations				
Theft from mail (less than $1,000)				
Moderate	12–18	12–18	18–24	18–24
Bribery of public officials				
Counterfeit currency (passing/possession $1,000–$19,999)				
Drugs:				
"Hard drugs," possession by drug user (less than $500)				
Marijuana, possession ($50 or more)				
Marijuana, sale (less than $5,000)				
"Soft drugs," possession (less than $5,000)				
"Soft drugs," sale (less than $500)				
Embezzlement (less than $20,000)				
Explosive, possession/transportation				
Firearms Act, possession/purchase/sale altered weapon(s), machine-gun(s), or multiple weapons				
Income tax evasion ($3,000–$50,000)				
Interstate transportation of stolen/forged securities (less than $20 000)				
Mailing threatening communications				
Misprison of felony				
Receiving stolen property with intent to resell (less than $20,000)				
Smuggler of aliens				
Theft, forgery/fraud ($1,000–$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High	12–18	12–18	18–24	18–24
Burglary or larceny (other than embezzlement) from bank or post office				
Counterfeit currency (passing/possession $20,000 or more)				
Counterfeiting (Manufacturing)				
Drugs:				
"Hard drugs," possession by drug-dependent user ($500 or more)				
"Hard drugs," sale to support own habit				
Marijuana, sale ($5,000 or more)				
"Soft drugs," possession ($5,000 or more)				
"Soft drugs," sale ($500–$5,000)				
Embezzlement ($20,000–$100,000)				
Interstate transportation of stolen/forged securities ($20,000–$100,000)				
Mann Act (no force—commercial purposes)				
Organized vehicle theft				
Receiving stolen property ($20,000–$100,000)				
Robbery (no weapon or injury)				
Theft, forgery/fraud ($20,000–$100,000)				
Very high	20–26	20–26	26–32	26–32
Robbery (weapon)				
Drugs:				
"Hard drugs," possession by non-drug-dependent user ($500 or more) or by nonuser (any quantity)				
"Hard drugs," sale for profit (no prior conviction for sale of "hard drugs")				
"Soft drugs," sale (more than $5,000)				
Extortion				
Mann Act (force)				
Sexual act (force)				
Greatest	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			
Aggravated felony (e.g. robbery, sexual act, assault)—weapon fired or serious injury				
Aircraft hijacking				
Drugs: "Hard drugs," sale for profit [prior conviction(s) for sale of "hard drugs"]				
Espionage				
Explosives (detonation)				
Kidnapping				
Willful homicide				

NOTES

1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
4. If a continuance is to be given, allow 30 days (1 month) for release program provision.
5. These guidelines are predicated upon good institutional conduct and program performance.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

GUIDELINE EVALUATION WORKSHEET (Revised October 1973)

Case Name..... Register Number.....

SALIENT FACTORS

Item A.....
No prior convictions (adult or juvenile)=2
One or two prior convictions=1
Three or more prior convictions=0 □

Item B.....
No prior incarcerations (adult or juvenile)=2
One or two prior incarcerations=1
Three or more prior incarcerations=0 □

Item C.....
Age at first commitment (adult or juvenile) 18 years or older=1
Otherwise=0 □

Item D.....
Commitment offense did not involve auto theft=1
Otherwise=0 □

Item E.....
Never had parole revoked or been committed for a new offense while on parole=1
Otherwise=0 □

Item F.....
No history of heroin, cocaine, or barbiturate dependence=1
Otherwise=0 □

Item G.....
Has completed 12th grade or received GED=1
Otherwise=0 □

Item H.....
Verified employment (or full-time school attendance) for a total of at least 6 months during last 2 years in the community=1
Otherwise=0 □

Item I.....
Release plan to live with spouse and/or children=1
Otherwise=0 □

Total Score.....

Offense Severity: Rate the severity of the present offense by placing a check in the appropriate category. If there is a disagreement, each examiner will initial the category he chooses.

Low .....
Low Moderate .....
Moderate .....
High .....
Very High .....
Greatest .....
(e.g. willful homicide, kidnapping) □

Jail Time (Months)..... + Prison Time (Months)..... =Total Time Served To Date ..... Months.
Guidelines Used: ..... Youth ..... Adult ..... NARA
Tentative Decision.....

§ 2.21 Reports considered.

Decisions as to whether a parole shall be granted or denied shall be determined on the basis of the application, if any, submitted by the prisoner, together with the classification study and all reports assembled by all the services which shall have been active in the development of the case. These reports may include the reports by the prosecution officers, reports by or for the sentencing court, records from the Federal Bureau of Investigation, reports from the officials in each institution in which the applicant shall have been confined, all records of social agency contacts, and all correspondence and such other records as are necessary or appropriate for complete presentation of the case. Before making a decision as to whether a parole should be granted or denied in any particular case, the Board will consider all available relevant and pertinent information concerning the case. The Board encourages the submission of such information by interested persons.

§ 2.22 Communication with the Board.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Board of Parole must submit a written request to the appropriate regional office setting forth the nature of the information to be discussed. Such personal interview may be conducted by staff personnel in the regional offices. Personal interviews, however, shall not be held by an examiner or member of the Board, except under the Board's appeals procedures.

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority to make decisions relative to the granting or denial of parole, or reparole and revocation or reinstatement of parole or mandatory release and to fix conditions of parole.

(b) Hearing examiners shall function as two-man panels and the concurrence of both examiners shall be required for their decision. In the event of a split decision by the panel, the appropriate regional Administrative Hearing Examiner shall cast the deciding vote.

(c) When a hearing examiner panel proposes to make a decision which falls outside of explicit guidelines for parole decision-making promulgated by the Board, the case shall be reviewed by the appropriate regional Administrative Hearing Examiner. When an Administrative Hearing Examiner does not concur in a decision of an examiner panel to set a parole effective date or continuance outside the Board's guidelines he may with the concurrence of the Regional Director modify the date to the nearest limit of the guidelines.

(d) In the event the Administrative Hearing Examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under paragraphs (b) and (c) of this section will be referred to another hearing examiner.

§ 2.24 Review of panel decision by the Regional Director and the National Appellate Board.

A regional Director may review the decision of any examiner panel and refer this decision, prior to written notification to the prisoner, with his recommendation and vote to the National Appellate Board for reconsideration and any action it may deem appropriate. Written notice of this reconsideration action shall be mailed or transmitted to the prisoner within fifteen working days of the date of the hearing. The Regional Director and each member of the National Appellate Board shall have one vote and decisions shall be based upon the concurrence of two out of three votes.

§ 2.25 Appeal of hearing panel decision.

(a) A prisoner may file with the responsible Regional Director a written appeal of a decision of a hearing examiner panel or a decision under § 2.24 to grant, deny or revoke parole or to revoke mandatory release. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. The appeal shall be considered by the Regional Director who may affirm the decision, order a new institutional hearing, order a regional appellate hearing, reverse the decision, or modify a continuance or the effective date of parole. Reversal of an examiner panel decision or the modification of such a decision by more than one hundred eighty days, whether based upon the record or following a regional appellate hearing, shall require the concurrence of two out of three Regional Directors. Appellate decisions requiring a second or additional vote shall be referred to other Regional Directors on a rotating basis as established by the Chairman.

(b) Regional appellate hearings shall be held at the regional office before the Regional Director. Attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Director stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Director shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(c) If no appeal is filed within thirty days of entry of the original decision, this decision shall stand as the final decision of the Board.

(d) Appeals under this section may be based only upon the following grounds:

(1) The reasons given for a denial or continuance do not support the decision; or

(2) There was significant information in existence but not known at the time of the hearing.

§ 2.26 Appeal to National Appellate Board.

(a) A prisoner may file a written appeal of the Regional Director's decision under § 2.25 to the National Appellate Board on a form provided for that purpose within thirty days after the entry of the Regional Director's written decision. The National Appellate Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or

order a rehearing at the institutional or regional level.

(b) The bases for such appeal shall be the same as for a regional appeal as set forth in § 2.25(d). However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appellate Board.

(c) Decisions of the National Appellate Board shall be final.

§ 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the entry of the decision to the National Appellate Board. The National Appellate Board, upon the concurrence of two members, may affirm the decision or schedule the case for a review by the entire Board at its next quarterly meeting. A quorum of five members shall be required and all decisions shall be by a majority vote. The Chairman shall vote on the decision only in the absence of a member. This appellate decision shall be final.

(b) If an appellate hearing is scheduled, attorneys, relatives, or other interested parties who wish to speak for or against parole at such hearing must submit a written request to the Chairman of the Board stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(c) If no appeal is filed within thirty days of the entry of the Regional Director's decision, this decision shall stand as the final decision of the Board.

(d) The bases for this appeal shall be the same as for a regional appeal as set forth in § 2.25(d).

§ 2.28 Reopening of cases.

Notwithstanding the appeal procedure of § 2.25 and § 2.26, the appropriate Regional Director may on his own motion reopen a case at any time upon the receipt of new information of substantial significance and may then schedule an institutional hearing or take any other action authorized under the provisions of § 2.25. Original jurisdiction cases may be reopened under the procedure of this section on the motion of two out of three Regional Directors and may be scheduled for an institutional hearing or for review by the Regional Directors on the record.

§ 2.29 Withheld and forfeited good time.

(a) Section 4202 of title 18 of the United States Code permits Federal prisoners to be paroled if they have observed the rules of the institution in which they are confined and if they are otherwise eligible for parole. Any forfeiture of statutory good time shall be deemed to indicate that the prisoner has violated the rules of the institution to a serious degree, and a parole will not be granted in any such case in which such a forfeiture remains effective against the prisoner concerned. Any withholding of statutory good time shall be deemed to indicate that the prisoner has engaged in some less serious breach of the rules of the institution. Nevetheless, parole will not usually be granted unless and until such good time has been restored.

(b) Neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from applying for and receiving a parole hearing.

(c) The above restrictions shall not apply, however, to the forfeiture or withholding of *extra good time* which is granted because of meritorious behavior. Parole may be ordered without regard to a prisoner's status insofar as *extra good time* is concerned, although the reasons for any forfeiture or withholding will be included among the other factors used in making the parole decision.

§ 2.30 Release; modification of release date.

(a) When an effective date has been set by the Board, release on that date shall be conditioned upon continued good conduct by the prisoner and the completion of a satisfactory plan for his supervision. The appropriate Regional Director may, on his own motion, reconsider any case prior to release and may reopen and advance or retard a parole date. If such previously granted parole date is retarded for more than sixty days because of institutional misconduct, the prisoner will be given a new hearing in accordance with § 2.12. The purpose of the hearing is to determine if the prisoner's parole grant should be rescinded or a new parole date established. Such hearings will be held on the next hearing docket at a Federal institution. If such a prisoner's misconduct occurred in a Federal Community Treatment Center or a state or local Halfway House, he shall be placed on the first hearing docket after return to a Federal institution.

(b) In any case of a prisoner who has been notified of parole and who has subsequently engaged in conduct in violation of the rules of his custody or confinement sufficient to become a matter of record, the Regional Director shall be advised promptly of such violation. The prisoner shall not be released until the institution has been advised that no change has been made in the Board's order to parole.

§ 2.31 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Board. If evidence comes to the attention of the Board that a prisoner willfully concealed or misrepresented information deemed significant, the Board, acting under the procedures of § 2.17 may act to rescind or revoke the parole.

§ 2.32 Committed fines.

In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law as follows:

(a) An indigent prisoner may make application to a U.S. Magistrate in the District wherein he is incarcerated or to the chief executive officer of the institution setting forth, under institutional regulations, his inability to pay such fine; if the magistrate or chief executive officer shall find that the prisoner, having no assets exceeding $20 in value except such as are by law exempt from being taken on execution for debt, is unable to pay the fine, and if the prisoner takes a prescribed oath of indigency, he shall be discharged from the commitment obligation of the committed fine sentence.

(b) If the prisoner is found to possess assets in excess of the exemption in paragraph (a) of this section nevertheless if the Board shall find that retention of all of such assets if reasonably necessary for his support or that of his family, upon taking of the prescribed oath concerning his assets the prisoner shall be discharged from the commitment obligation of the committed fine sentence. If the Board shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking of the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account on his fine of that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

(c) Discharge from the commitment obligation of any committed fine sentence does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

§ 2.33 Parole to detainers; statement of policy.

The policy of the Board with regard to parole to detainers is in general accord with the principles recommended by the Association of Administrators of the Interstate Compact for the Supervision of Parolees and Probationers:

(a) The status of detainers held against prisoners in Federal institutions will be investigated, so far as is reasonably possible, prior to parole hearings.

(b) In appropriate cases summary information regarding such prisoner will be provided to state or local authorities. The Board urges institution officials to provide such information.

(c) Where the detainer is not lifted, the Board may grant parole to such detainer if a prisoner is considered in other respects to be a good parole risk. Ordinarily, however, the Board will grant parole to such detainer only if the status of that detainer has been investigated.

(d) The Board will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

(e) The presence of a detainer is not of itself a valid reason for the denial

of parole. It is recognized that where the prisoner appears to be a good parole risk, there may be distinct advantage in granting parole despite a detainer.

§ 2.34 Parole to local or immigration detainers.

(a) When a state or local detainer is outstanding against a prisoner whom the Board wishes to parole, the Board may order either of the following:

(1) "Parole to the actual physical custody of the detaining authorities only." In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Board makes a new order of parole.

(2) "Parole to the actual physical custody of the detaining authorities or an approved plan." In this event, release is to be effected even though the detainer might be withdrawn, providing there is an acceptable plan for community supervision.

(b) When the Board wishes to parole a prisoner subject to a detainer filed by Federal immigration officials, the Board may order one of the following:

(1) "Parole for deportation only." In this event, release is not to be effected unless immigration officials make full arrangements for deportation immediately upon release.

(2) "Parole to the actual physical custody of the immigration authorities only." In this event, release is not to be effected unless immigration officials take the prisoner into custody—regardless of whether or not deportation follows.

(3) "Parole to the actual physical custody of the immigration authorities or an approved plan." In this event, release is to be effected regardless of whether or not immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order from the Board.

§ 2.35 Mental competency proceedings.

(a) Whenever a prisoner or parolee is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary hearing to determine his mental competency shall be conducted by a panel of hearing examiners or other official(s) (including a U.S. Probation Officer) designated by the Board of Parole.

(b) At the competency hearing, the hearing examiners or designated official(s) shall receive oral or written psychiatric testimony and other evidence that may be available. A preliminary determination of the prisoner's mental competency shall be made upon the testimony, evidence, and personal observations of the prisoner. If the examiner panel or designated official(s) determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiners or designated official(s) determine that a person is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Director for review. If the Regional Director concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner or parolee has recovered sufficiently to understand the nature of and participate in the proceedings and, in the case of a parolee, may order such parolee committed to a Bureau of Prison's facility for further examination. In any such case, the Regional Director shall require a progress report at least every six months on the mental health of the prisoner. When the Regional Director determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest possible date.

(d) If the Regional Director disagrees with the findings of the hearing examiners or designated official(s) as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

§ 2.36 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Director. In general, the following factors should be present before a prisoner is released after parole has been granted:

(1) The probation officer to whom the releasee is assigned may, in his discretion, require that there be available to the releasee an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside. The adviser should act as a source of advice for the releasee relative to community adjustment. The adviser may provide special services such as vocational placement, personal counsel, or referral to community agencies. The adviser is expected to report to the probation officer any law violation or serious misconduct on the part of the releasee. The adviser may be required by the probation officer to countersign the parolee's monthly supervision report to indicate actual contact with the parolee.

(2) There should be satisfactory evidence that the prospective parolee will be legitimately employed following his release; and

(3) There should be satisfactory assurance that necessary aftercare will be available to a parolee who is ill or who has some other problem which requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Board is satisfied that another place of residence will serve the public interest more effectively or will improve the probabilities of the applicant's readjustment.

(c) Insofar as it is practicable, the details of each plan for release shall be verified by a field investigation by the United States Probation Officer of the District into which release will be made.

(d) Any of the requirements described in this section may be waived by the Regional Director whenever circumstances warrant.

§ 2.37 Release on parole; statement of policy.

Parole release dates generally will not be set more than six months from the date of the parole hearing. Exceptions may be made in extraordinary situations or when necessary to permit an adequate period of residence in a Community Treatment Center. Such residence in a Community Treatment Center shall not generally exceed one hundred twenty days. An effective date of parole shall not be set for a Saturday, Sunday or a legal holiday. A parole grant may be retarded by the Regional Director for up to one hundred twenty days without a hearing for development and approval of release plans.

§ 2.38 Sponsorship of parolees; statement of policy.

It is the policy of the Youth Corrections Division to cooperate with groups desiring to serve as sponsors of parolees. In all cases, sponsors shall serve under the direction of and in cooperation with the probation officers to whom the parolees are assigned.

§ 2.39 Mandatory release in the absence of parole.

A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions and extra good time deductions as he may have earned through his behavior and efforts at the institution of confinement. He shall be released as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less one hundred eighty days. Insofar as possible, release plans shall be completed before the release of any such prisoner.

§ 2.40 Same; youth offenders.

A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

§ 2.41 Reports to police departments of names of parolees; statement of policy.

Names of parolees under supervision will not routinely be furnished to a police department of a community, except as required by law. All such notifications are to be regarded as confidential.

§ 2.42 Community supervision by United States Probation Officers.

(a) Pursuant to section 3655 of title 18 of the United States Code, United States Probation Officers are required to provide such parole services as the Attorney General may request. The Attorney General has delegated his authority in this regard to the Board (28 CFR 0.126[b]). In conformity with the foregoing, probation officers function as parole officers and provide supervision to parolees and mandatory releasees under the Board's jurisdiction.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Board.

§ 2.43 Duration of period of community supervision.

(a) Any prisoner, with the exception of those sentenced prior to June 29, 1932, who is released under the provisions of laws relating to parole, shall continue until the expiration of the maximum term or terms specified in his sentence without deductions of allowance for good time. Prisoners sentenced prior to June 29, 1932, shall receive reductions in their maximum term or terms of imprisonment for such good time allowances as may be authorized by law.

(b) The Regional Director may discharge from supervision prior to the normal expiration date as provided in § 2.46(b), but the sentence is not thus commuted and such a parolee may be reinstated to supervision or retaken on the basis of a violator warrant.

(c) For certain narcotic offenses a prisoner will have a "special parole term" imposed by the court at the time of sentencing. The period of supervision under the basic sentence is served separately and must be completed prior to the beginning of any "special parole term." The "special parole term" will not be aggregated with the basic sentence for any purpose, including computation of time to serve following parole revocation, if any.

§ 2.44 Conditions of release.

The conditions of release are printed on the release certificate and are binding regardless of whether the releasee signs the certificate. The Board, or a member thereof, may add special conditions or modify the conditions of release at any time.

§ 2.45 Travel by parolees and mandatory releasees.

(a) The probation officer may approve travel outside the district without approval of the Regional Director in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purposes of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Director is required for other travel, including travel outside the continental limits of the United States, employment more than fifty miles outside the district, and vacations exceeding thirty days. A special condition imposed by the Regional Director prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

§ 2.46 Supervision reports, modification and discharge from supervision.

(a) All parolees and mandatory releasees shall make such reports to the United States Probation Officers to whom they have been assigned as may be required by the Board or Probation Officers. Probation Officers shall submit summary reviews of the progress of parolees and mandatory releasees according to Board policy. On the basis of summary reviews of the progress of parolees, the Regional Director may modify the reporting requirement of parolees or releasees.

(b) After the parolee or mandatory releasee has been under supervision for at least one year, the Regional Director may, in his discretion, permit the parolee to submit a written report to his probation officer on a less frequent basis than once a month. After a period of such reduced reporting the Regional Director may further order that the parolee be discharged from all supervision by the Probation Officer. In the latter instances, a parolee may be reinstated to supervision or a warrant may be issued for him as a violator at any time prior to the expiration of the sentence or sentences imposed by the court. Other modification in the reporting requirements may be made by the Regional Director at any time during the parolee's term.

§ 2.47 Modification and discharge from supervision; youth offenders.

A committed youth offender may remain under supervision until the expiration of his sentence or he may be released from supervision or unconditionally discharged at any time after one year of continuous supervision on parole.

§ 2.48 Setting aside conviction.

When an unconditional discharge has been granted to a youth offender prior to the expiration of his maximum term of sentence, his conviction shall be automatically set aside and the Regional Director shall issue to the youth offender a certificate to that effect.

§ 2.49 Revocation of parole or mandatory release.

(a) If a parolee or mandatory releasee violates any of the conditions of his release, and satisfactory evidence thereof is presented to the Board, or a member thereof, a warrant may be issued and the offender returned to an institution. Warrants shall be issued or withdrawn only by the Board, or a member thereof.

(b) A warrant for the apprehension of any parolee shall be issued only within the maximum term or terms for which the prisoner was sentenced.

(c) A warrant for the apprehension of any mandatory releasee shall be issued only within the maximum term or terms for which the prisoner was sentenced, less one hundred eighty days.

§ 2.50 Same, youth offenders.

In addition to issuance of a warrant on the basis of violation of any of the conditions of release, the Youth Corrections Division may, when the Division is of the opinion that such youth offender would benefit by further treatment, direct his return to custody or issue a warrant for his apprehension and return to custody. Upon his return to custody, such youth offender shall be given a revocation hearing under the same provisions as adult offenders as specified in § 2.54–§2.56. Following the revocation hearing parole may be reinstated, revoked or the terms and conditions thereof may be modified.

§ 2.51 Unexpired term of imprisonment.

The time a prisoner was on parole or mandatory release is not credited to the service of his sentence if revocation occurs. When a warrant is issued the sentence ceases to run, but begins to run again when the releasee is taken into Federal custody by the execution of the Board's violation warrant. However, the sentences of prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act run uninterruptedly from the date of conviction without regard to any revocation, except as provided in § 2.10(c). In no case may the commitment of a person under the Federal Juvenile Delinquency Act extend past his twenty-first birthday.

§ 2.52 Execution of warrant; notice of alleged violations.

(a) Any officer of any Federal correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant shall be delivered shall execute such warrant by taking such prisoner and returning him to the custody of the Attorney General. The warrant shall be considered delivered to a Federal officer when the warrant is signed and placed in the mail at the Board headquarters or regional office before the expiration of the maximum term of sentence.

(b) On arrest of the prisoner the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the alleged violations of parole or mandatory release upon which the warrant was issued.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee or man-

datory releasee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever comes first. Monthly supervision reports are to be submitted, and the releasee must continue to abide by all the conditions of release.

§ 2.53 Warrant placed as a detainer and dispositional interview.

(a) In those instances where the prisoner is serving a new sentence in an institution, the warrant may be placed there as a detainer. Such prisoner shall be advised that he may communicate with the Board relative to disposition of the warrant, and may request that it be withdrawn or executed so his violator term will run concurrently with the new sentence. Should further information be deemed necessary, the Regional Director may designate a hearing examiner panel to conduct a dispositional interview at the institution where the prisoner is confined. At such dispositional interview the prisoner may be represented by counsel of his own choice and may call witnesses in his own behalf, provided he bears their expenses. He shall be given timely notice of the dispositional interview and its procedure.

(b) Following the dispositional review the Regional Director may:

(1) Let the detainer stand

(2) Withdraw the detainer and close the case if the expiration date has passed;

(3) Withdraw the detainer and reinstate to supervision; thus permitting the federal sentence time to run uninterrupted from the time of his original release on parole or mandatory release.

(4) Execute warrant, thus permitting the sentence to run from that point in time. If the warrant is executed, a previously conducted dispositional interview may be construed as a revocation hearing.

(c) In all cases, including those where a dispositional interview is not conducted, the Board shall conduct annual reviews relative to the disposition of the warrant. These decisions will be made by the Regional Director. The Board will request periodic reports from institution officials for its consideration.

§ 2.54 Revocation by the Board, preliminary interview.

(a) A prisoner who is retaken on a warrant issued by a Board Member shall be given a preliminary interview by an official designated by the Regional Director to determine if there is probable cause to hold the prisoner for a revocation hearing and, if so, whether such revocation hearing should be conducted in the locality of the charged violation(s) or in a Federal institution. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) At the beginning of the preliminary interview, the hearing officer shall explain the Board's revocation procedure to the prisoner and shall advise the prisoner that he may have the preliminary interview postponed so that he may obtain representation by an attorney or may arrange for the attendance of witnesses. The prisoner shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing. The prisoner may also request the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the prisoner admits a violation or has been convicted of a new offense committed while on supervision or unless the hearing officer finds good cause for their non-attendance. At the preliminary interview the hearing officer shall review the violation charges with the prisoner, receive the statements of witnesses and documentary evidence on behalf of the prisoner, and allow cross-examination of those adverse witnesses in attendance.

(c) At the conclusion of the preliminary interview, the hearing officer shall prepare and submit to the Regional Director a summary of the interview, which shall include recommended findings of whether there is probable cause to hold the prisoner for a revocation hearing. Upon receipt of the summary of the preliminary interview, the Regional Director shall either order the prisoner reinstated to supervision, order that a revocation hearing be conducted in the locality of the charged violation(s), or direct that the prisoner be transferred to a Federal institution for a revocation hearing.

(d) The prisoner shall be retained in local custody pending completion of the preliminary interview, submission of the summary of the hearing officer, and notification by the Regional Director relative to further action.

(e) A postponed preliminary interview may be conducted as a local revocation hearing, by an examiner panel or other hearing officer designated by the Regional Director provided that the prisoner has been advised that the postponed preliminary interview will constitute his final revocation hearing.

§ 2.55 Local revocation hearing.

(a) If the prisoner requests a local revocation hearing prior to his return to a Federal institution, he shall be given a revocation hearing reasonably near the place of an alleged violation if the following conditions are met:

(1) The local hearing would facilitate the production of witnesses or the retention of counsel;

(2) The prisoner has not been convicted of a crime committed while under supervision; and

(3) The prisoner denies that he has violated any condition of his release. Otherwise, he shall be given a revocation hearing after he is returned to a Federal institution. However, the Regional Director may, on his own motion, designate a case for a local revocation hearing.

(b) If there are two or more alleged violations, the hearing shall be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant, as determined by the Regional Director.

(c) Following the hearing the prisoner shall be retained in custody until final action is taken relative to revocation or reinstatement, or until other instructions are issued by the Regional Director.

§ 2.56 Revocation hearing procedure.

(a) A revocation hearing shall be conducted by a hearing examiner panel or, in a local revocation hearing only, by another official designated by the Regional Director. In the latter case, the decision relative to revocation shall be made by an examiner panel on the basis of the hearing summary pursuant to the provisions of § 2.23. A revocation decision may be appealed under the provisions of § 2.25, § 2.26, or § 2.27 as applicable.

(b) The purpose of the revocation hearing shall be to determine whether the prisoner has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(c) The alleged violator may present voluntary witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(d) If the alleged violator has not been convicted of a new criminal offense while under supervision and does not admit violation of any of the conditions of his release, the Board shall, on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocations may be based. Those adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance.

(e) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by reading or summarizing the appropriate document for the alleged violator.

§ 2.57 Confidentiality of parole records.

To the end that the objectives and procedures of professionalized parole may be advanced and, more specifically so that the channels of information vital to sound parole actions may be kept open and that offenders released on parole may be protected against publicity deleterious to their adjustment, the following principles relating to the confidential-

ity of parole records shall be followed by Board:

(a) Dates of sentence and commitment, parole eligibility dates, mandatory release dates, dates of termination of sentence and whether an inmate is being considered for parole, has been granted or denied parole, and if granted parole, the effective date set by the Board will be disclosed in individual cases upon proper inquiry by a party in interest.

(b) Who, if any one, has supported or opposed an application for parole may be revealed at the Board's discretion only in the most exceptional circumstances, with the express approval of such person(s) and after a decision relative to parole has been made.

(c) Other matters contained in parole records, including how a member votes relative to parole, will be held strictly confidential and will not be disclosed to unauthorized persons.

Dated: May 28, 1974.

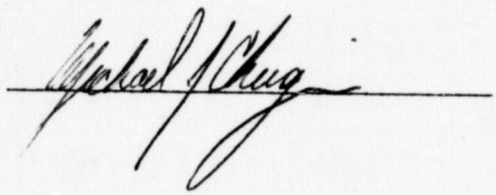
MAURICE H. SIGLER,
Chairman,
U.S. Board of Parole.

[FR Doc.74-12673 Filed 6-4-74;8:45 am]

CERTIFICATE OF SERVICE

This is to certify that I have today hand-delivered a copy of the attached Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of the Jerome N. Frank Legal Services Organization to the attorney for the government (appellee) in this matter, and have mailed a copy of same to the attorney for the defendant-appellant, whose names and addresses appear below.

October 15, 1974.



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